

### REMARKS

Claims 8-11 and 24-28 are pending. Claims 10, 11, 26, and 27 are indicated as allowable if rewritten in independent form. Claims 1-7 and 12-16 have been canceled in the present Response.

#### Rejections under 35 U.S.C. § 102

Claims 8, 9, 24, 25, and 28 stand rejected under 35 U.S.C. § 102(b) in light of U.S. Patent Pub. No. 2001/0012671 to Hoshino et al. ("Hoshino"). As the PTO provides in MPEP § 2131, "[t]o anticipate a claim, the reference must teach every element of the claim...." (emphasis added). Therefore, each reference applied under 35 U.S.C. § 102 must disclose all of the elements of the claims to sustain the rejection. Accordingly, Applicant respectfully traverses these rejections on the following grounds.

Claim 8 recites, in part, a channel region formed in the substrate between the first and third doping regions by turning on the high-voltage MOS transistor to pass current between the source and drain regions, where a resistance per unit length of the channel region is substantially equal to a resistance per unit length of the first doping region.

Applicant has carefully reviewed the Examiner's response to Applicant's remarks in the previously filed response. Applicant respectfully traverses the Office action's contention that a variation of approximately 30% is substantially equal. The Office action relies heavily on the case of *Playtex Products, Inc. v Proctor and Gamble Co.*, 400 F.3d 901 (Fed. Cir. 2005). However, Applicant submits that such reliance on *Playtex* is misplaced.

On page 7, the Office action emphasizes the statement in *Playtex* that "[i]n claiming 'substantially flattened surfaces,' Playtex claimed more than flat surfaces." Applicant does not disagree with this statement, but submits that the Office action is missing the point made by *Playtex*. The Federal Circuit in *Playtex* is simply refusing to reduce the term "substantially flattened surfaces" to "flattened surfaces," which would ignore the modifier "substantially." In other words, the *Playtex* case is not focused on the overall bounds of what "substantially" encompasses, but rather on the fact that the term cannot be read out of a claim to improperly narrow the claim. In this regard, *Playtex* is not even applicable to Applicant's claim 1, as neither

the Examiner nor Applicant are arguing that the term “substantially equal” is the exact equivalent of “equal.” As recognized by the Federal Circuit in *Playtex*, the purpose of the term “substantially” as used in a claim is to “avoid a strict numerical boundary to the specified parameter.” (*Playtex* at 907). The court states that “[t]he term ‘substantial’ is a meaningful modifier implying ‘approximate’, rather than ‘perfect.’” (*Playtex* at 907). This does not contradict Applicant’s usage, as it is used in claim 1 in order to “avoid a strict numerical boundary to the specified parameter.”

The Office action also states on page 7 that “it was error, in the court’s view, to construe ‘substantially flattened surfaces’ as requiring the introduction of a numerical tolerance, or to construe such a term as imposing precise numeric constraints.” Again, Applicant agrees that the Federal Circuit is noting that “substantially” is used to “avoid a strict numerical boundary to the specified parameter.” Again, this does not contradict Applicant’s claim 1.

The statements made in the Office action regarding *Playtex* simply do not provide support for the Office action’s contention that a difference of 30% is “substantially equal”. To reach this conclusion, the Office action’s reasoning must necessarily go beyond the court’s decision in *Playtex* to stretch the modifier “substantially” to mean far more than a modifier used to “avoid a strict numerical boundary to the specified parameter” and one that is “a meaningful modifier implying ‘approximate’, rather than ‘perfect.’” In fact, Applicant submits that the court’s language regarding the term “substantially” actually contradicts the reasoning proposed in the Office action that a variation of approximately 30% is “substantially equal.”

In addition, the Office action states on page 8 that “when comparing resistances (which often vary by orders of magnitude), 2.75 ... is in fact “substantially equal” to 2.1.” However, the 2.75 and 2.1 refer to slopes, and Applicant submits that a variation of approximately 30% for a slope is simply not “substantially equal.”

Accordingly, Applicant respectfully submits that a difference in slope of approximately 30% as disclosed in Hoshino is not “substantially equal” as required by claim 8. Accordingly, the cited figures and text of Hoshino fail to teach or suggest each element of claim 8 as required by MPEP § 2131, and claim 8 is allowable over the cited art for at least this reason. Claim 9 depends from and further limits claim 8 and is therefore allowable for at least the same reason as claim 8.

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Independent claims 24 and 28 both recite, in part, a source region formed in a substrate on the opposite side of the gate structure from the first drain region, wherein a channel region formed in the substrate between the first drain region and source region has a resistance per unit length that is substantially equal to a resistance per unit length of the first drain region. As described above, the cited figures and text of Hoshino fail to teach or suggest the above recited element of claims 24 and 28 as required by MPEP § 2131, and claims 24 and 28 are allowable over the cited art for at least this reason. Claim 25 depends from and further limits claim 24 and is therefore allowable for at least the same reason as claim 24.

#### Conclusion

It is respectfully submitted that all the claims in the application are in condition for allowance. Should the Examiner deem that any further amendment is needed to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the below listed telephone number.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 17, 2005.

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